IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 261 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KADVAJI KODARJI THAKARDA

Appearance:

MR KP RAVAL, APP for Appellant

MR SK BUKHARI for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 27/07/2000

ORAL JUDGEMENT

1. This Appeal is filed by the State against the judgment of acquittal passed by learned Judicial Magistrate, First Class, Idar, on 23rd December, 1991.

2. Present respondents were tried by Judicial Magistrate First Class, Idar, in Criminal Case No. 1281 of 1990 for the offences punishable under Sections 447, 324, 504, 323 read with Section 114 of the IPC.

3. The incident in question appears to have taken place on 20th June, 1990 at 7.00 clock in the morning at village Rampurvas, Taluka Idar, District Sabarkantha. As per prosecution case, original complainant Dalpatsinh Kodarsinh Sisodiya, resident of Vadali, owns a land at village Rampurvas, which is known as Amblivala. It further appears that complainant Dalpatsinh and Respondent herein have dispute about this land. At the time of incident, wife of the complainant - Kailashben alias Premilaben and one Balvantsinh Chhatrasinh Sisodiya went to their field for cultivation at about 9.00 a.m. All the four respondents herein entered unlawfully in the field of the complainant and gave axe blow on the middle of the head of Kailashben, accused No.2 - respondent No.2 herein, gave stick blows to the wife of the complainant on left hand and the remaining two accused gave fist blows to Kailasben and threatened to murder her, for which, a complaint came to be filed before Vadali Police Station at about 11.15 a.m. which was investigated.

4. In pursuance of the chargesheet filed against the respondents in the above court, the charge was framed against them vide Exh.25. All the accused denied the allegations, and the prosecution thereafter tendered the evidence. After recording of further statement of the accused and hearing both the parties, learned trial judge i.e. Judicial Magistrate, First Class, Idar, came to the conclusion that accused were required to be acquitted of the charges u/s 324, 323, 506(2), 449 read with 114 of the Indian Penal Code because the prosecution could not prove the case beyond reasonable doubt. This judgment and order of acquittal dated 23rd December, 1991 is the subject matter of this Appeal, which is filed by the State.

5. Learned APP Mr. K.P. Raval on behalf of the State was heard while nobody appears on behalf of the respondents, but, we have carefully gone through the record entirely.

6. Learned APP Mr. Raval has taken this court through the whole evidence and has argued that there are two eye witnesses and third is injured herself. There is medical evidence also and, therefore, the learned trial

judge erred in acquitting the accused.

7. Considering the submissions made on behalf of the State and on scrutinising the report, it appears that, the prosecution has examined three eye witnesses, which are material for consideration of this Appeal. Those eye witnesses are PW 2 Jaswantsinh (Exh. 37), PW-4 Balvantsinh Chhatrasinh Sisodiya (Exh.40), PW-6 Kailashben @ Premilaben (Exh.48) - injured eye witness. In support, prosecution has also examined PW 12 - Exh.57 Dr. Manilal Joitabhai Patel, Medical Officer of Vadali Hospital, who examined Kailashben as well as Jaswantsinh.

8. As per the case of prosecution - accused No.1 gave an axe blow on the middle of the head of Kailashben, accused No.2 gave stick blows on the left hand and the remaining two accused gave fist blows. The incident was witnessed by PW-2 Jaswantsinh because he is the owner of the adjacent field and he was present at the time of the incident, while it is the case of the prosecution that PW-4 Balvantsinh Chhatrasinh Sisodiya was accompanying with the injured witness Kailashben Exh.48 PW6. While considering and appreciating the evidence of these eye witnesses, I find material contradictions in the story narrated by these eye witnesses. Jaswantsinh PW2 states that PW 4 Balvantsinh ran away from the scene of offence and therefore, he was not present. It is also stated by this witness that accused No.2 Shankerji Kadvaji Thakarda gave an axe blow to Kailashben on her left hand, while the prosecution witness No.4 specifically states that accused No.1 had stick and he gave stick blows on the head of Kailashben, while other accused remained inactive and remained at a distance from the scene of offence. When the evidence of injured witness is considered along with the evidence of other two eye witness, she states that accused No.1 had two axes in his hand and two blows were given by accused No.1 on her head. She further states that accused No.2 gave a stick blow on her left leg and this fact has not been stated earlier by two eye witnesses nor this is the prosecution case. Further, witness Kailashben states that the accused gave stick blows on other parts of her body and in this connection, if we read the evidence of Dr. Manilal, PW-12 Exh.57, I found that Kailashben had three injuries, which one was on head, and other two injuries were on left hand. Surprisingly, witness Jaswantsinh was also examined by the same Doctor, who came along with the police yadi and history. Doctor stated in evidence that both the injured witnesses gave the history of assault on 20th June, 1990 at 9.00 a.m.

9. Therefore, from the above discussion, it is clear that while appreciating the evidence of eye witnesses, the story of the prosecution becomes doubtful because all the three witnesses have given different version of the incident. Not only that, but the evidence of Kailashben, appears to be not in conformity with the medical evidence of Doctor, examined at Exh.57 as PW No.12. Surprisingly, a fact was also emerged that witness Jaswantsinh also received injuries, while in his evidence, he has not explained about these injuries. All these facts go to suggest that prosecution could not establish the genesis of the story put forward by the prosecution and charges therefore could not be proved against the accused beyond reasonable doubt. Prosecution witness when they gave evidence contrary to each other and the medical evidence becomes unreliable and untrustworthy.

10. This Appeal being an appeal against acquittal, this Court would not interfere with the order of acquittal, unless the case of miscarriage of justice is apparent. In this case learned Judicial Magistrate has rightly appreciated the evidence and came to the conclusion that the charges against the accused could not be proved by the prosecution beyond reasonable doubt and, therefore, benefit of doubt goes to the accused and accused were rightly acquitted by learned Magistrate.

11. For the aforesaid reasons, no interference is called for in the order and judgment of acquittal of the Magistrate recorded in Criminal Case No. 1281 of 1990 dated 23.12.1991 and hence this Appeal is dismissed.

(J.R. Vora, J.)